45449 SERVICE DATE – DECEMBER 15, 2016
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35991

THE ATLANTA DEVELOPMENT AUTHORITY D/B/A INVEST ATLANTA AND ATLANTA BELTLINE, INC.—VERIFIED PETITION FOR A DECLARATORY ORDER

Digest:[1] The Atlanta Development Authority and its predecessors in interest acquired the real estate underlying a line of railroad in Fulton County, Ga. The Board finds that while the acquisition of the northern segment of the line did not require Board authority, acquisition of the southern segment did require Board authority. For the part of the southern segment that remains within the Board's jurisdiction, the Authority must either obtain Board authority or amend the deed under which it acquired the real estate. The Board also denies an appeal of a Director's decision granting a protective order, rejects a supplemental filing, and denies as moot a motion to strike the supplemental filing.

Decided: December 13, 2016

The Atlanta Development Authority d/b/a Invest Atlanta (Authority) and Atlanta BeltLine, Inc. (ABI) (collectively, Atlanta Parties), noncarriers, are the public redevelopment and implementation agents, respectively, for the Atlanta BeltLine Project (Project), an urban redevelopment effort in Atlanta involving numerous current or former rail segments. (Atlanta Parties Pet. 2.) The Atlanta Parties have filed a verified petition for declaratory order requesting that the Board confirm the regulatory status of one of the rail segments involved in the Project, and settle certain issues with respect to transfers of the segment's underlying real estate.

BACKGROUND

The Project. According to the Atlanta Parties, the Project is among the largest, most wide-ranging urban redevelopment and mobility projects currently underway in the United States. (Atlanta Parties Pet. 2-3.) The Project will combine transit, green space, trails, and new commercial, residential, and public facility development along a 22-mile ring of current or former rail segments encircling Atlanta's urban core. (Id. at 2.) It will involve coordinated redevelopment efforts along these segments that will link a network of uses and opportunities for

[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

living, employment, entertainment, and recreation through public and private investment and development projects. (Id. at 3.) This case focuses on one of the segments involved in the Project, a line of railroad known as the Northeast Quadrant (Line).

The Line. According to the Atlanta Parties, the Line is approximately 4.14 miles long, located in Fulton County, Ga., between mileposts 636.56 and 632.42. (Atlanta Parties Supp. 5, June 15, 2016.) The Line consists of two segments on either side of the Montgomery Ferry Road Bridge, which is at milepost 632.84. (Id. at 6.) The portion south of the bridge (the Southern Segment) is approximately 3.72 miles long and extends from the bridge to the southernmost point on the Line at milepost 636.56. (Id.) The portion north of the bridge (the Northern Segment) is approximately 0.42 miles long and extends to the northernmost point on the Line at milepost 632.42. (Id.) The Northern Segment runs adjacent to the rear of various residential properties along Flagler Avenue. (Atlanta Parties Supp., Ex. C, June 15, 2016; Flagler Owners Reply, Ex. B.) Several owners and residents of these properties have filed joint pleadings in this case and are referred to collectively as the Flagler Owners.[2]

Transfers of the Underlying Real Estate of Line. The Line was owned by Norfolk Southern Railway Company (NSR), a rail carrier, until 2004. (Atlanta Parties Pet. 3). The underlying real estate was transferred to the Authority through three transactions, though NSR retained an easement. (Id. at 3-4.) Board permission was neither sought nor obtained for any of the three transactions. (Id. at 4.)

NSR to the Mason Entities. On December 30, 2004, NSR conveyed the real estate underlying the Line to six non-carrier entities collectively referred to as the Mason Entities.[3] (Id. at 3.) Under the deed conveying the real estate (the 2004 Deed), NSR retained "all railroad tracks, roadbed, ballast, culverts, bridges, tunnels, communications and signal facilities, fixtures and all other railroad appurtenances located on the [Line] and … an easement or right of way for all passenger and freight railroad purposes over, upon and across the [Line]." (Id. at 10, Ex. A at 2.) In June 2007, NSR and the Mason Entities amended the 2004 Deed by executing a Deed

[2] The Flagler Owners consist of: Cynthia Vick, Gordon B. Ragan, Jr., Jane G. Powell, Loran M. Powell, Elizabeth A. Albert, Michael Loving, Dawn Smith, Roderick Smith, Robin Tubbs, Jason Godwin, Steven R. Green, Stacey E. Clay, Sandy Flores, Christopher Draper, Dennis Sabo, Jr., Laura M. Shepard, Angela Fox, Hannibal Heredia, Patricia S. Jones, Jay Jones, Donna M. Fitzmaurice, Patrick J. Fitzmaurice, Samantha C. Bontrager, Dewayne M. Bontrager, Molly Taylor, Josh B. Taylor, Thomas R. Markovic, Megan Cochard, Matthew R. Cochard, Amanda K. Sapra, Neil K. Sapra, Margaret N. Corbett, Nicolas Albano, Eric Bymaster, Fulton D. Lewis, III, S. Neil Rhoney, Tom Philpot, Anna L. Lentz, Kurt Lentz, Lee S. Prince, Louise P. Mulherin, and Jeff Culley. While originally joining the Flagler Owners, Mary Lou Saye, Earl Saye, and Alan B. Particio withdrew from this proceeding as noticed in the Flagler Owners' June 27, 2016 filing.

[3] Ansley North Beltline, LLC; Ansley South Beltline, LLC; Piedmont Beltline, LLC; North Avenue Beltline, LLC; Corridor Beltline, LLC; and Corridor Edgewood, LLC.

of Corrections, which contains the following conditions for the easement area south of the Montgomery Ferry Road Bridge (i.e., on the Southern Segment):

- at the request or consent of the Mason Entities, NSR shall negotiate the joint use of the easement area for passenger service;
- NSR shall not negotiate the use of the easement area with any party without the prior written consent of the Mason Entities; and
- at the request of the Mason Entities, NSR shall pursue abandonment or discontinuance authority.

(Id. at 3 n.4, Ex. B at 2.)

Mason Entities to NE Corridor Partners. On October 31, 2007, the Mason Entities conveyed their interest in the underlying real estate for the entire Line to NE Corridor Partners, LLC (NE Corridor Partners), an entity formed by ABI on behalf of the City of Atlanta to develop the corridor for public purposes as part of the Project. (Id. at 4.) The conveyance was subject to the NSR easement in the 2004 Deed, as amended by the Deed of Correction. (Id., ¶26 of Ex. B to Ex. D.)

NE Corridor Partners to the Authority. On October 31, 2008, NE Corridor Partners transferred the underlying real estate for the entire Line to the Authority. (Id. at 4, Ex. E.) This conveyance was also subject to the NSR easement in the 2004 Deed, as amended by the Deed of Correction. (Id., ¶21 of Ex. B to Ex. E.)

Abandonment Proceeding. In December 2008, pursuant to 49 C.F.R. § 1152.50, NSR filed a Verified Notice of Exemption to abandon most of the Southern Segment and an additional 0.84 miles of line to the south, from milepost 633.10 to milepost 637.40. Norfolk S. Ry.—Aban. Exemption—in Fulton Cty., Ga., AB 290 (Sub.-No. 210X) (STB served Dec. 28, 2008). The Authority participated in the proceeding and actively supported the abandonment as necessary for implementing the Project. NSR timely filed a notice of consummation of abandonment on October 22, 2010. Norfolk S. Ry.—Aban. Exemption—in Fulton Cty., Ga., AB 290 (Sub.-No. 210X) (filed Oct. 22, 2010). NSR thus abandoned the portion of the Southern Segment between mileposts 633.10 and 636.56, as well as a non-Line segment just to the south of the Southern Segment between mileposts 636.56 and 637.40.

Current Proceeding. On January 8, 2016, the Atlanta Parties filed a petition for declaratory order in this proceeding asking the Board to make three findings: (1) that the acquisition of the underlying real estate from NSR by the Mason Entities did not require Board approval pursuant to Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad (State of Maine), 8 I.C.C.2d 835 (1991), and therefore the absence of Board approval is not a basis for voiding the transaction; (2) that because the Mason Entities' acquisition of the real estate underlying the Line did not require Board approval, the subsequent acquisitions of that real estate from the Mason Entities (including the acquisition by the Authority) did not require Board approval, and therefore the absence of Board approval is not a basis for voiding those transactions; and (3) that because NSR consummated abandonment of the Line south of the Montgomery Ferry Road Bridge, the Board has no continuing jurisdiction

over that portion of the Line, and therefore the Board need not approve any future conveyance of real estate underlying that portion of the Line.

The Atlanta Parties submitted the following documents with their petition for declaratory order: (1) the 2004 Deed; (2) the 2007 Deed of Correction revising the easement retained by NSR; (3) a 2007 supplemental agreement stating that no traffic had moved over the easement area for at least two years; (4) the 2007 deed conveying the real estate underlying the Line from the Mason Entities to NE Corridor Partners; and (5) the 2008 deed conveying the real estate underlying the Line from NE Corridor Partners to the Authority (collectively, Conveying Documents). (Atlanta Parties Pet. Ex. A-E.)

On January 27, 2016, the Flagler Owners filed in opposition to the Atlanta Parties' petition. The Flagler Owners argue that the conveyance of the Line from NSR to the Mason Entities did not comport with the State of Maine doctrine and was subject to 49 U.S.C. § 10901(a)(4), thus requiring Board approval. (Flagler Owners Reply 8.) Specifically, they assert that the easement retained by NSR was neither permanent nor exclusive, because the Mason Entities could "force" NSR to discontinue railroad service or seek abandonment and to negotiate joint use of the Line. The Flagler Owners also argue that NSR did not control the easement because NSR could not negotiate use of the rail easement with any party without the prior written consent of the Mason Entities. (Id. at 10.) The Flagler Owners argue that because no § 10901 authority was sought, the Board should deny the Atlanta Parties' petition and instead issue a declaratory order finding that the conveyance of the Line from NSR to the Mason Entities is of no effect.[4] (Id. at 4.) The Flagler Owners request that the Board establish a procedural schedule for discovery under 49 C.F.R. § 1114.21(a), in part because the Atlanta Parties' petition does not provide any detail concerning the purchase and sale, use, or continuing operating agreements between NSR and the Mason Entities. (Id. at 13.)

On June 8, 2016, the Board issued a decision (June 8 Decision)[5] directing the Atlanta Parties to submit copies of any and all operating agreements and other related agreements, if any, pertaining to the transactions for which they have requested a Board determination, so that the Board could evaluate the transactions under the State of Maine criteria.[6] In the June 8 Decision, the Board denied the Flagler Owners' request for discovery for failing to demonstrate why discovery is necessary for the Board's consideration of the terms of the sales.

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[4] There is also an ongoing state law property dispute between the Atlanta Parties and the Flagler Owners. On March 31, 2016, the Atlanta Parties filed a complaint in the Superior Court of Fulton County, Ga., seeking an order that the Flagler Owners remove alleged encroachments on the Line, to quiet title in the Authority, and seeking damages for trespass. (Atlanta Parties Second Supp. to Pet. 2.)

[5] See the June 8 Decision for a complete account of the pleadings filed up to that date.

[6] Additionally, the Atlanta Parties and NSR were directed to clarify, using mileposts: (1) the total length of the Line; (2) the length of the Northern Segment; (3) the length of the Southern Segment; and (4) the length of the Line adjacent to the Flagler Owners' property.

On June 14, 2016, the Atlanta Parties filed a motion for protective order, alleging that the information and documents they intended to submit in response to the June 8 Decision included the purchase and sale agreements from two transactions that may include highly confidential and commercially sensitive, proprietary information, and that public disclosure of that information could be damaging to the parties to those transactions. (Atlanta Parties Mot. 1.) On June 15, 2016, the Board, through the Director of the Office of Proceedings, granted the motion for protective order (June 15 Decision), and the Atlanta Parties filed their response to the June 8 Decision. Pursuant to the protective order, the Atlanta Parties submitted both highly confidential and public versions of the purchase and sale agreement between NSR and Madison Ventures, Ltd.,[7] dated October 5, 2004, and an amendment thereto dated December 21, 2004, and public versions of the purchase and sale agreements of the subsequent transactions up to the purchase by NE Corridor Partners (the Transaction Documents).

On June 27, 2016, the Flagler Owners appealed the June 15 Decision granting the protective order. The Flagler Owners allege that the June 15 Decision "unnecessarily suppressed the Transaction Documents at issue from the public eye" and thereby ignored the public's interest in the Project, this proceeding, and the state court action. (Flagler Owners Appeal 5.) The Flagler Owners also note that the Board initially included an incomplete physical address and incorrect email address for the Flagler Owners on the Service List for this proceeding, and thus failed to serve them with the June 8 Decision and the June 15 Decision. As a result, the Flagler Owners claim that they were handicapped in their ability to challenge those decisions. (Flagler Owners Appeal 7.)

On June 29, 2016, the Atlanta Parties replied to the Flagler Owners' appeal of the June 15 Decision. The Atlanta Parties assert that very little material in the Transaction Documents was actually redacted and that access to the complete Transaction Documents is available by executing the Highly Confidential Undertaking attached as Exhibit B to the June 15 Decision. (Atlanta Parties Reply 2.) Additionally, the Atlanta Parties argue that the Board's use of incorrect addresses for the Flagler Owners was not prejudicial to them because the Board publicly posts filings and decisions on its website. (Atlanta Parties Reply 2-3.)

On October 14, 2016, the Flagler Owners filed a first supplement to their opposition to the petition for declaratory order, requesting to file new evidence obtained from NSR and again requesting that the Board establish a procedural schedule for discovery under 49 C.F.R.

[7] The exact relationship between Madison Ventures, Ltd., which entered into the purchase and sale agreement with NSR, and the Mason Entities, to whom NSR later deeded the property, is not clear, although the same individual (Wayne Mason) signed the purchase and sale agreement on behalf of Madison Ventures, Ltd., and the Deed of Correction on behalf of the Mason Entities. (Compare Atlanta Parties Supp. in Response to STB Order, Ex. A-1 at 16 with Atlanta Parties Pet., Ex. B at 3.) Because our State of Maine analysis does not depend on the nature of the relationship between these entities, we need not direct the Atlanta Parties to submit an explanation.

§ 1114.21(a). The Flagler Owners allege that, in response to discovery served in the state court proceeding, NSR produced a previously unseen document—a Supplemental Agreement between NSR and the Mason Entities, dated June 22, 2007—that "clearly demonstrates that the conveyance of the Northeast Quadrant Line from Norfolk Southern to the Mason Entities failed to meet the conditions set forth by State of Maine and its progeny." (Flagler Owners' Supp. 6.) The Flagler Owners renew their request for a procedural schedule and discovery, on grounds that the Supplemental Agreement is "likely not the only document governing the issues presented herein that has yet not been brought before this Board for its consideration." (Id. at 7.)

On October 19, 2016, the Atlanta Parties filed a motion to strike the Flagler Owners' first supplement, or in the alternative for leave to file a reply to the first supplement, and a reply. The Atlanta Parties point out that the Supplemental Agreement referred to by the Flagler Owners had been attached to the initial petition for declaratory order as Exhibit C and referenced by the Flagler Owners in their January 27, 2016 response. (Atlanta Parties Mot. 1-2.) The Atlanta Parties argue that the first supplement is an attempt to re-litigate the Board's prior denial of the Flagler Owners' request for discovery in the June 8 Decision. (Id. at 2.)

For the reasons set forth below, the Board will deny the Flagler Owners' appeal of the June 15 Decision, deny the request to file new evidence and for discovery in the Flagler Owners' first supplement, deny the Atlanta Parties' motion to strike as moot, and grant the Atlanta Parties' petition for declaratory order.

DISCUSSION AND CONCLUSIONS

The Flagler Owners' Appeal of the June 15 Decision

Under 49 C.F.R. § 1011.6(c)(3), the Chairman has delegated to the Director of the Office of Proceedings the authority to dispose of routine procedural matters. Appeals of those decisions are decided by the Board. 49 C.F.R. §§ 1011.6(b) and 1115.1(c). Such appeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice. 49 C.F.R. §§ 1011.6(b) and 1115.1(c).[8]

The Flagler Owners have shown neither a clear error of judgment nor manifest injustice here. First, the Board finds no error in the Director's decision to grant the motion for protective order. By issuing the protective order, the Director facilitated the disclosure of requested information by ensuring that any commercially sensitive or proprietary information remains protected and used solely for this proceeding. If the Flagler Owners suspect that information or

[8] Because the authority to issue a protective order is a routine procedural matter delegated to the Director of the Office of Proceedings under 49 C.F.R. § 1011.6(c)(3), the Board reviews the exercise of that authority under the appeal standard applicable to that section, found in both 49 C.F.R. §§ 1011.6(b) and 1115.1(c), not under 49 C.F.R. § 1011.2(a)(7), the regulation upon which the Flagler Owners rely.

documents have been improperly designated "Highly Confidential," the protective order provides that they may challenge such designations. June 15 Decision, slip op. at 2. Moreover, it is evident from the face of the publicly available Transaction Documents that very little information has been redacted as Highly Confidential, and what little information has been redacted is accessible to the Flagler Owners' counsel through execution of the Highly Confidential Undertaking attached as Exhibit B to the June 15 Decision. Therefore, the June 15 Decision does not "unnecessarily suppress" the Transaction Documents.

Second, the Flagler Owners were not prejudiced by the Board's service errors. The Board regrets any inconvenience and delays caused by the clerical mistakes in the addresses on the Service List. However, those mistakes were identified and corrected on June 16, 2016, and all pleadings and decisions were posted on the Board's website. Even if the Flagler Owners had been able to present their argument prior to the Director's decision, it would not have been grounds for denial of the motion for protective order. In these circumstances, the record shows no error in judgment or manifest injustice associated with the Director's June 15 Decision. Therefore, the Flagler Owners' appeal of the June 15 Decision will be denied.

The Flagler Owners' First Supplement and the Atlanta Parties' Motion to Strike

In their first supplement filed on October 14, 2016, the Flagler Owners ask to be permitted to file new evidence and renew their request for discovery. These requests are based solely on their position that the Supplemental Agreement between NSR and the Mason Entities was "previously unseen" and that there are likely other relevant documents that have not been submitted to the Board. (Flagler Owners First Supp. 4.) However, the Supplemental Agreement was attached to the Atlanta Parties' original declaratory order petition and referenced by the Flagler Owners in their response to the petition. (Atlanta Parties Pet. Ex. C; Flagler Owners Reply 13.) Accordingly, the request to file new evidence and for discovery in the Flagler Owners' first supplement will be denied. As a result, the Atlanta Parties' October 19, 2016 motion to strike the first supplement is denied as moot.

The Atlanta Parties' Petition for Declaratory Order

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 (formerly § 721), the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. See Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C. 2d 675 (1989). The Board finds that it is appropriate to issue a declaratory order to provide clarification on the controversy presented here, specifically: whether regulatory approval was required for the Mason Entities (and subsequently the Authority) to acquire the real estate underlying the Line; and whether the Board no longer has jurisdiction over the portion of the Southern Segment subject to abandonment by NSR, in which case future conveyances would not require Board approval.

The acquisition of an active rail line, and the common carrier obligation that goes with it, ordinarily requires Board approval under 49 U.S.C. § 10901, even if the acquiring entity (including a state) is a noncarrier. See Common Carrier Status of States, State Agencies & Instrumentalities, & Political Subdivisions, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). However, the Board's State of Maine line of precedent holds that the sale of the physical assets of a rail line by a carrier to a state or other public agency does not constitute the sale of a rail line within the meaning of § 10901 when the selling carrier retains: (1) a permanent, exclusive freight rail operating easement giving it the right and common carrier obligation to provide freight rail service on the line; and (2) sufficient control over the line to carry out common carrier operations without undue interference by the owner of the physical assets. Fla. Dep't of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc., FD 35110, slip op. at 5 (STB served Dec. 15, 2010). In determining whether the conveyances of the underlying real estate from NSR to the Mason Entities (and then to the subsequent owners) met the State of Maine requirements, the key question is whether the Conveying Documents and Transaction Documents gave the Mason Entities the ability to prevent NSR from meeting its common carrier obligations on the Line. N.J. Transit Corp.—Acquis. Exemption—Norfolk S. Ry., FD 35638 slip op. at 3 (STB served Mar. 27, 2013); Mass. Dep't of Transp.—Acquis. Exemption—Certain Assets of CSX Transp., Inc., FD 35312, slip op. at 8 (STB served May 3, 2010), aff'd sub nom. Bhd. of R.R. Signalmen v. STB, 638 F.3d 807 (D.C. Cir. 2011).

For the purposes of the State of Maine analysis, there is a critical difference between the documents pertaining to the Northern and Southern segments. Specifically, under the 2004 Deed and subsequent Conveying Documents and Transaction Documents, there were conditions that applied only to the Southern Segment. In particular, the Conveying Documents and Transaction Documents state: that NSR shall negotiate the joint use of the easement area for passenger service at the request or consent of the Mason Entities; that NSR shall not negotiate the use of the easement area with any party without the prior written consent of the Mason Entities; and that, at the request of the Mason Entities, NSR shall pursue abandonment or discontinuance authority.[9] (Atlanta Parties Pet. Ex. B at 2.) No such conditions applied to the Northern Segment. This distinction results in a different analysis for each segment under State of Maine, as discussed below.

With respect to the Southern Segment, the condition requiring the Mason Entities' prior written consent for NSR's negotiations for the use of that segment violated the Board's State of Maine precedent. This provision vested significant control in the Mason Entities (and their successors), as it could have potentially given the Mason Entities the ability to prevent NSR from communicating with shippers directly, or entering into track use, grade crossing, or other operating agreements, thus unduly interfering with NSR's ability to carry out its common carrier obligation over the easement. See Santa Cruz Reg'l Transp. Comm'n—Pet. for Declaratory

[9] Such conditions were also included in the subsequent conveyances to NE Corridor Partners and the Authority.

Order, FD 35491, slip op. at 4-5 (STB served Dec. 15, 2011) (finding that a similar provision did not give the purchasing party the ability to interfere with the carrier's ability to carry out its common carrier obligation only after the agreement was modified to state that the purchasing party may not materially interfere with the carrier's freight service rights and obligations unless first approved by the Board). Here, the Mason Entities acquired the unrestricted ability to interfere with NSR's ability to carry out its common carrier obligation. Therefore, the sale of the Southern Segment from NSR to the Mason Entities did not fall within our State of Maine precedent and required Board authority.[10] Accordingly, the subsequent conveyances of the Southern Segment from the Mason Entities to NE Corridor Partners, and from the NE Corridor Partners to the Authority, also did not fall within the State of Maine precedent (as those conveyances were subject to the same terms and conditions).

However, because the portion of the Southern Segment between milepost 633.10 and milepost 636.56 has since been abandoned with the Authority's active support, see supra at p. 3, the Board will not require the parties to either seek Board authorization or modify these particular transactions to comport with State of Maine after the fact. Because that portion of the Southern Segment has been fully abandoned, it is no longer a rail line under the Board's jurisdiction. The question of the Authority's ability to interfere with NSR's common carrier obligation on that portion of the Southern Segment is moot.

The same cannot be said for that portion of the Southern Segment that has not been abandoned (i.e., the segment between milepost 632.84 and milepost 633.10). As noted, under the current wording of the governing documents, the Authority has the ability to unreasonably interfere with NSR's existing common carrier obligation on that segment. Accordingly, the Authority must either seek and receive after-the-fact Board authority to acquire control of that segment or promptly amend the relevant documents to omit the language, discussed above, giving it control over NSR's ability to provide common carrier service. See Ga. Dep't of Transp.—Acquis. Exemption—CSX Transp., Inc., FD 35591 (STB served Feb. 27, 2012) (granting an exemption for the acquisition of a line of rail 10 years after the transaction took place, due to an oversight on the part of the parties to the transaction); Santa Cruz Reg'l Transp. Comm'n, FD 35491, slip op. at 4 (STB served Aug. 22, 2011) (allowing the petitioner to submit modified documents amending language that called into question the permanence and exclusivity of the freight rail operating easement and gave the petitioner the ability to unduly interfere with the operation of the rail line at issue). Within 30 days of this decision, the Authority must either file for after-the-fact acquisition authority, or file a copy of the amended documents.

As for the Northern Segment, the Board finds that conveyance of this segment from NSR to the Mason Entities (as well as the subsequent conveyances) did comport with State of Maine

[10] Because NSR did not retain sufficient control over the Southern Segment to allow it to carry out its common carrier obligation, we need not address whether NSR satisfied the other prerequisite for State of Maine to apply here, i.e., that NSR retained a permanent, exclusive easement over the Southern Segment.

precedent. Specifically, the Board finds that NSR retained a permanent, exclusive easement and sufficient control to carry out its common carrier obligations over that segment. Unlike the Southern Segment, nothing in the Conveying Documents or Transaction Documents permits undue interference with NSR's ability to conduct common carrier operations over the Northern Segment. Because NSR retained an unconditional easement over the Northern Segment, the initial sale of the underlying real estate on the Northern Segment to the Mason Entities did not require Board authority under 49 U.S.C. § 10901. Consequently, the subsequent conveyances of the Northern Segment real estate leading to the purchase by the Authority also did not require Board authority.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

It is ordered:

1. The Flagler Owners' appeal of the June 15 Decision is denied.

2. The request to file new evidence and for discovery in the Flagler Owners' first supplement is denied.

3. The Atlanta Parties' motion to strike, or in the alternative for leave to file a reply to, the first supplement is denied as moot.

4. The Atlanta Parties' petition for declaratory order is granted to the extent discussed above.

5. Within 30 days of this decision, the Authority must either file for after-the-fact acquisition authority, or file a copy of the amended documents.

6. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.